

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NORDONIA HILLS CITY SCHOOL)	
DISTRICT BOARD OF EDUCATION, et)	CASE NO. 5:16-CV-01973
al.,)	
)	JUDGE JOHN R. ADAMS
Plaintiffs,)	
)	
v.)	
)	
JASON D. WALLACE, et al.)	
)	
Defendants.)	

**PLAINTIFFS' MOTION TO DEEM DEFENDANTS'
JOINT MOTION TO DISMISS AS UNTIMELY**

In response to Defendants' *Joint Motion to Dismiss*¹ and pursuant to Loc.R. 7.1(h),² Plaintiffs, Board of Education for the Nordonias Hills City School District ("Board" or "District") and Hylant Administrative Services, LLC d/b/a HAS Claims Service ("Hylant") (Board and Hylant collectively, "Plaintiffs"), respectfully move the Court to deem Defendants' Motion as untimely, deny in its entirety Defendants' *Joint Motion to Dismiss*, and require Defendants to answer Plaintiffs' Complaint.

Plaintiffs' Complaint was filed on August 5, 2016. (ECF #1) Service of the Complaint and Summons was perfected upon Defendants Bache, Wallace and Wallace & Bache LLP on August 29, 2016. (ECF #8) Pursuant to Fed.R.Civ.P. 12, Defendants' answer or other

¹ Out of an abundance of caution relative to Plaintiffs' responsive pleading obligations, Plaintiffs' Memorandum in Opposition to Defendants' Joint Motion to Dismiss is being filed contemporaneously with this Motion.

² Pursuant to Loc.R. 7.1(h), Defendants' motion "may be denied solely on the basis of the untimely filing."

responsive pleading was required to be filed on or before September 19, 2016. Defendants' Joint Motion to Dismiss was not filed until September 20, 2016. (ECF #10)

Defendants' failure to adhere to the well-established procedural time limitations in responding to Plaintiffs' Complaint must not be overlooked. Indeed, Defendants' failure to timely respond (albeit by one day) to Plaintiffs' Complaint in the instant litigation is not the first or even the second time that Defendants' failure to follow basic administrative and/or civil procedure needlessly extended or increased the costs of the litigation. As alleged in excruciating detail within Plaintiffs' Complaint, it is actions (or tactics) like these that form the basis for Plaintiffs' underlying action for fees in an administrative proceeding under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. §§ 1400, *et seq.* (ECF #1)

For the foregoing reasons, Plaintiffs respectfully seek the requested relief from this Court.

Respectfully submitted,

/s/ Kathryn I. Perrico

Kathryn I. Perrico (Reg. No. 0076565)

Direct Dial: 216-928-2948

Email: kperrico@walterhav.com

Christina Henagen Peer (Reg. No. 0071579)

Email: cpeer@walterhav.com

Direct Dial: 216-928-2918

Sara Ravas Cooper (Reg. No. 0076543)

Email: scooper@walterhav.com

Direct Dial: 216-928-2898

WALTER | HAVERFIELD LLP

1301 E. Ninth Street, Suite 3500

Cleveland, OH 44114

(216) 781-1212 telephone

(216) 575-0911 facsimile

Attorneys for Plaintiff,

Nordonia Hills City School District

*Board of Education and Hylant Administrative
Services LLC d/b/a HAS Claims Service*

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this case is currently unassigned to a case management track and, therefore, is subject to the 20-page limitation set forth in L.R. 7.1(f). Accordingly, *Plaintiffs' Motion to Deem Defendants' Joint Motion to Dismiss as Untimely* complies with that page limitation.

/s/ Kathryn I. Perrico
Kathryn I. Perrico

CERTIFICATE OF SERVICE

A copy of the foregoing *Plaintiffs' Motion to Deem Defendants' Joint Motion to Dismiss as Untimely* has been filed this 7th day of November, 2016, through the Court's electronic filing system. All parties may access the foregoing via the Court's electronic filing system.

/s/ Kathryn I. Perrico
Kathryn I. Perrico